



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: October 8, 2024

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: APPROVE AN INCREASE TO THE COLANTUONO, HIGHSMITH & WHATLEY BUDGET IN AN AMOUNT NOT TO EXCEED \$99,400 FOR A REVISED TOTAL BUDGET OF \$393,400 – SUPPLEMENTAL APPROPRIATION

ISSUE:

To consider approval of an increase and supplemental appropriation to the legal budget for Colantuono, Highsmith and Whatley in an amount not to exceed \$99,400 for a revised total budget of \$393,400, for legal services in the matter of Simpson v. City of Riverside.

RECOMMENDATION:

That the City Council:

1. Approve an increase to the legal budget for the law firm of Colantuono, Highsmith & Whatley in an amount not to exceed \$99,400 for a revised total budget of \$393,400; and
2. With five affirmative votes, authorize the Chief Financial Officer, or designee, to record a supplemental appropriation from General Fund Reserves in the amount of \$99,400 in the General Fund, City Attorney Legal Fees account.

DISCUSSION:

City Charter section 702, "Eligibility, powers and duties of City Attorney," provides, in part, that "the City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein."

The City Council has previously approved the retention of Colantuono, Highsmith & Whatley and that firm has executed an Attorney Services Agreement with the City of Riverside for the provision of legal services. The City Council has previously approved budgets for this law firm and the City Attorney's Office is now seeking an increase to an existing budget in an amount not to exceed \$99,400.

On December 19, 2019, a class action lawsuit entitled Simpson v. City of Riverside was filed against the City alleging that the City is overcharging customers for water utility service in violation of Article XIID, Section 6 of the California Constitution, on the grounds that the City is

transferring 11.5% of water utility revenues to the City's general fund. The transfer, also known as the "General Fund Transfer", was approved by voters on June 4, 2013, as a general tax. The plaintiff is seeking refunds for all customers for monies collected in violation and also that the court set aside the voter's 2013 approval of the General Fund Transfer. The trial was bifurcated into two phases, liability and damages.

The Court issued its ruling on the liability phase on August 17, 2023, finding that the City's water rates violated Article XIID, Section 6 of the California Constitution because they were set in an amount sufficient to recover the General Fund Transfer. An initial trial date of April 3, 2024 was set for the second phase of the trial regarding damages. Plaintiff then submitted extensive discovery requests to the City, which the City timely responded to. The amount of discovery resulted in the trial date being extended to September 4, 2024. The hearing has been held

The initial budget approved by the City Council in 2019 for the *Simpson v. City of Riverside* lawsuit was \$253,000.00, which was based upon the expectation of one hearing on the merits. The budget was increased on July 16, 2024 by an additional \$40,000, to reflect additional discovery. The City has had one hearing (on liability but not damages), extensive discovery, the hearing on damages, potential further hearings based upon the trial court's decision after the September 4, 2024 hearing, all of which caused the expected legal fees to increase beyond the approved budget.

An additional increase to the budget in the amount of \$99,400 is now being requested. This is due to more unexpectedly intense discovery activity in the remedies phase, briefing of new cases recently issued related to refunds, and potential post-hearing briefing on actual remedies, based upon the trial court's decision, which has not yet been issued.

STRATEGIC PLAN ALIGNMENT:

The retention of experienced outside counsel to assist in the defense of Proposition 218 and Proposition 26 lawsuits against the City's electric general fund transfer supports the priorities of the City of Riverside's Envision Riverside 2025 Strategic Plan, by contributing to Strategic Priority No. 5 High Performing Government, by supporting the following:

Goal No. 5.4. Achieve and maintain financial health by addressing gaps between revenues and expenditures and aligning resources with strategic priorities to yield the greatest impact.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside is transparent and makes decisions based on sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Use of outside counsel that specialize in certain areas of the law promote trust in the community.
2. **Equity** – Use of outside counsel that specialize in areas of the law related to regulation of the City's electric utility will support RPU as RPU provides equitable opportunities for all customers to become more sustainable which benefits the entire community.
3. **Fiscal Responsibility** – The City Attorney's Office is expending funds in a careful and

judicious manner in order to achieve cost savings for the City through pro-active legal scrutiny of Federal and State proceedings that could impact electric rates and the cost of transmission infrastructure.

4. **Innovation** – The retention of specialized legal counsel to support transmission and generation projects supports innovation projects because such legal representation will promote reliable electric service at an affordable price.
5. **Sustainability & Resiliency** – Riverside is committed to providing safe, reliable and affordable energy for all residents while allowing the importation of 100% zero-carbon electricity production by 2040. Use of outside counsel that specialize in areas of the law related to regulation of the City’s electric utility will allow the City to accomplish that goal.

FISCAL IMPACT:

The approval of the increase to the budget for the law firm of Colantuono, Highsmith & Whatley is in an amount not to exceed \$99,400 and is for specialized legal assistance. There are sufficient General Fund Reserves to accommodate the supplemental appropriation; additionally, savings are anticipated from fiscal year-ending June 30, 2024 (pending completion of the City’s financial audit), which will serve to replenish reserves following this appropriation. Upon Council approval, a supplemental appropriation will be recorded in the amount of \$99,400 in the General Fund, City Attorney Legal Fees Account No. 1300000-421100.

Prepared by: Susan D. Wilson, Assistant City Attorney

Certified as to
availability of funds: Kristie Thomas, Finance Director / Assistant Chief Financial Officer